



1 state appellate court and state supreme court, all of which were denied as of May 9, 2007.  
 2 Petitioner filed the instant federal habeas petition on May 22, 2007.

### 3 DISCUSSION

#### 4 A. Standard of Review

5 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
 6 in custody pursuant to the judgment of a state court only on the ground that he is in  
 7 custody in violation of the Constitution or laws or treaties of the United States.” 28  
 8 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

9 A district court shall “award the writ or issue an order directing the respondent to  
 10 show cause why the writ should not be granted, unless it appears from the application that  
 11 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

#### 12 B. Petitioner’s Claims

13 As grounds for federal habeas relief, Petitioner alleges: (1) the Board’s fourth  
 14 denial of a parole date based on the commitment offense and pre-commitment factors,  
 15 despite petitioner’s surpassing his minimum sentence to be served, violates due process of  
 16 law and his liberty interest; (2) the commitment offense (a non-homicide offense) does  
 17 not rise to the level of the “especially heinous” (particularly egregious) manner to justify  
 18 the fourth denial of parole violating due process of law; and (3) the Board presented no  
 19 evidence under the law that contained an indicia of reliability showing petitioner was a  
 20 “current” risk if released on parole violating due process of law. Liberally construed,  
 21 Petitioner’s allegations are sufficient to require a response. The Court orders Respondent  
 22 to show cause why the instant petition should not be granted.

### 23 CONCLUSION

24 1. Petitioner’s motion to proceed in forma pauperis (docket no. 2) is  
 25 GRANTED.

26 2. The Clerk shall serve by mail a copy of this order and the petition  
 27 and all attachments thereto upon the Respondent and the Respondent’s attorney, the  
 28 Attorney General of the State of California.

1 The Clerk shall also serve a copy of this order on Petitioner.

2 3. Respondent shall file with the Court and serve on Petitioner, within **sixty**  
3 **days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
4 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
5 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of  
6 all portions of the state parole record that have been transcribed previously and that are  
7 relevant to a determination of the issues presented by the petition.

8 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
9 with the Court and serving it on Respondent within **thirty days** of his receipt of the  
10 answer.

11 4. Respondent may file a motion to dismiss on procedural grounds in lieu of  
12 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
13 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
14 with the Court and serve on Respondent an opposition or statement of non-opposition  
15 within **thirty days** of receipt of the motion, and Respondent shall file with the Court and  
16 serve on Petitioner a reply within **fifteen days** of receipt of any opposition.

17 5. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
18 that all communications with the Court must be served on respondent by mailing a true  
19 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
20 parties informed of any change of address by filing a separate paper captioned "Notice of  
21 Change of Address." He must comply with the Court's orders in a timely fashion.  
22 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
23 to Federal Rule of Civil Procedure 41(b).

24 IT IS SO ORDERED.

25 DATED: 8/27/07

26   
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Justo Escalate  
3 E-91258  
4 CTF -Central  
5 F-Wing 302  
6 P.O. Box 689  
7 Soledad, CA 93960-0689  
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